

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-02-OR-356
)	
Victory & Power Ministries, Inc.)	NAL/Acct. No.200332620005
Licensee of AM Broadcast Station WPFC)	
Baton Rouge, Louisiana)	FRN 0008-0778-77
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: February 14, 2003

By the Enforcement Bureau, New Orleans Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find Victory & Power Ministries, Inc. (“Victory Ministries”), licensee of radio station WPFC, apparently liable for a forfeiture in the amount of twenty-five thousand dollars (\$25,000) for willful violation of Sections 11.35(a), 73.49, and 73.3526(c) of the Commission's Rules (“Rules”).¹ Specifically, we find Victory Ministries apparently liable for failing to maintain operational Emergency Alert System (“EAS”) equipment, failing to provide an effective locked fence enclosing the station’s antenna tower, and failing to have the station’s public inspection file available for inspection during regular business hours.

II. BACKGROUND

2. On November 13, 2002, an agent from the FCC Enforcement Bureau’s New Orleans Office inspected AM broadcast station WPFC located in Baton Rouge, Louisiana. The station’s EAS equipment was not functioning because the encoder/decoder unit was not connected to any receivers in order to monitor an incoming alert signal. Station personnel were unable to produce any logs noting EAS tests sent or received, or any notation that the unit had been removed from service for repair. During this inspection, conducted during regular business hours, station personnel were unable to locate the station’s public inspection file to make it available for inspection. Upon arrival at the transmitter site, the agent observed the gate on the fence enclosing the station’s antenna tower was unlocked and standing open. No person, other than the station’s contract engineer accompanying the agent during the inspection, was at the antenna tower site when the agent observed the open gate. The antenna tower had radio frequency potential at its base and the property was not enclosed in an effective perimeter fence.

III. DISCUSSION

3. Section 11.35(a) of the Rules states that broadcast stations and cable systems and wireless cable systems are responsible for ensuring that EAS Encoders, EAS Decoders, and Attention Signal

¹ 47 C.F.R. §§ 11.35(a), 73.49, and 73.3526(c).

generating and receiving equipment used as part of the EAS are installed so that the monitoring and transmitting functions are available during the times that the stations or systems are in operation. On November 13, 2002, the station did not have EAS monitoring equipment installed.

4. Section 73.49 of the Rules states that antenna towers having radio frequency potential at the base must be enclosed within effective locked fences or other enclosures. On November 13, 2002, the gate on the fence enclosing the antenna tower for station WPFC was observed unlocked and standing open.

5. Section 73.3526(c) requires that a station's public inspection file be available for inspection at any time during regular business hours. During regular business hours on November 13, 2002, station personnel could not locate the public inspection file to make it available for inspection.

6. Based on the evidence before us, we find Victory Ministries willfully² violated Sections 11.35(a), 73.49, and 73.3526(c) of the Rules by failing to maintain operational EAS equipment, failing to provide an effective locked fence enclosing the station's antenna tower, and failing to have the station's public inspection file available for inspection during regular business hours.

7. Pursuant to Section 1.80(b)(4) of the Rules,³ the base forfeiture amount for failing to have EAS equipment installed or operational is \$8,000, the base forfeiture amount for violations involving AM tower fencing is \$7,000, and the base forfeiture amount for public inspection file violations is \$10,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁴ Considering the entire record and applying the factors listed above, this case warrants a \$25,000 forfeiture.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁵ and Sections 0.111, 0.311 and 1.80 of the Rules,⁶ Victory & Power Ministries, Inc. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of twenty-five thousand dollars (\$25,000) for willful violation of Sections 11.35(a), 73.49, and 73.3526(c) of the Rules by failing to maintain operational EAS equipment, failing to provide an effective locked fence enclosing the station's antenna tower, and failing to have the station's public inspection file available for public inspection during regular business hours.

² Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

³ 47 C.F.R. § 1.80(b)(4).

⁴ 47 U.S.C. § 503(b)(2)(D).

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. §§ 0.111, 0.311, 1.80.

9. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, Victory & Power Ministries, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁷

11. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street S.W., Washington, DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC’s Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

14. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Victory & Power Ministries, Inc., 6940 Harry Drive, Baton Rouge, Louisiana 70806.

FEDERAL COMMUNICATIONS COMMISSION

⁷ See 47 C.F.R. § 1.1914.

James C. Hawkins
District Director, New Orleans Office
Enforcement Bureau

Attachment